APPEAL NO. 020508
FILED APRIL 8, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 4, 2002. With regard to the three disputed issues before him, the hearing officer determined that the appellant (claimant) was in a state of (cocaine) intoxication at the time of his injury; that the respondent (carrier) was relieved of liability; that the claimant's injury extends to his right ankle and foot but not to the right knee or low back; and, because the claimant did not have a compensable injury, he did not have disability.

The claimant appeals, asserting that "Laboratory tests [drug screen] alone are not sufficient" to prove intoxication, that there was "NO EVIDENCE" to prove that the claimant was intoxicated at the time of injury, and that the "more intense injury to the right ankle" masked the claimant's other injuries. The carrier responds, urging affirmance on all the issues.

DECISION

Affirmed.

It is relatively undisputed that a truck moving slowly in reverse hit the claimant's ankle and fractured it. The claimant also claims injuries to his right knee and low back. The claimant was taken to the hospital where a drug screen tested positive for cocaine metabolites. A gas chromatography mass spectrophotometry (GC-MS) test established a level of 1974 nanograms per milliliter (ng/ml) of cocaine metabolite and the carrier's expert medical witness, in both a report and in testimony at the CCH, stated that within a reasonable degree of medical probability the claimant was within the "spectrum of intoxication" at the time of his injury. The claimant testified that he was not intoxicated at the time of his injury and that he had used cocaine some eight days prior to his injury.

The hearing officer did not err in determining that the claimant's work-related ankle injury was not compensable because the claimant was intoxicated, as defined by Section 401.013 of the 1989 Act, due to his use of statutorily controlled substances and dangerous drugs, thereby relieving the carrier of liability for paying compensation under Section 406.032(1)(A).

While a drug screen alone is not determinative of whether the claimant was intoxicated, it, along with the GC-MS test and the testimony of the carrier's expert witnesses, shifted the burden of proof to the claimant to show that the claimant had normal use of his mental or physical faculties. The hearing officer made Finding of Fact No. 4 that the claimant did not have the normal use of his mental or physical faculties and that finding is supported by the evidence.

The hearing officer weighed the credibility of the evidence and the hearing officer's determinations on the issues are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

GEORGE MICHAEL JONES
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Terri Kay Oliver
Appeals Judge